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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|------------------------|---------------------|------------------|
| 10/682,444 | 10/09/2003 | Patrick C. St. Germain | SSS-106 | 9792 |
| 7590 | 03/18/2009 | | EXAMINER | |
| OLSON & HIERL, LTD. 36th Floor 20 North Wacker Drive Chicago, IL 60606 | | | TAWFIK, SAMEH | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3721 | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 03/18/2009 | PAPER |

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/682,444

Filing Date: October 09, 2003

Appellant(s): GERMAIN, PATRICK C. ST.

Talivaldis Cepuritis
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/16/2008 appealing from the Office action mailed 07/17/2008.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------|----------|---------|
| 5,088,707 | Stemmler | 02/1992 |
| 3,942,782 | Hermach | 03/1976 |
| 4,824,426 | DuFresne | 04/1989 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Note the 102 rejections have been withdrawn from the action, in response to appellant's filed brief of 12/16/2008.

Claim Rejections - 35 USC § 103

Claims 11, and 13-16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Stemmler (U.S. Patent No. 5,088,707) in view of Hermach (U.S. Patent No. 3,942,782).

Stemmler discloses an apparatus for interfolding at least two sheets of material for forming a web of interfolded sheets of material, the apparatus comprising at least two dispensers providing sheets of material (Figs. 1-3; via W1 and W2); an inter-folder downstream from the dispensers and comprising a pair of folding rollers for receiving preformed sheet material from each of the dispensers and producing interfolded sheets of material (Figs. 1-3; via folding rollers 12 and 13).

Stemmler does not disclose performing dispensers to provide at least one longitudinally extending fold line and at least one fold respectively. However, Hermach discloses a similar apparatus comprising means for dispensing two different sheets and longitudinally folding the sheets (Fig. 2; via 26A-26C and 22A-22C).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Stemmler's folding apparatus by having the longitudinal folds to the sheets, as suggested by Hermach, in order to improve the apparatus for associating and folding the respective sections of multi sectioned, bulky newspapers (column 2, lines 1-4).

Regarding claim 13: Stemmler discloses that the sheets of material respectively include a plurality of spaced apart transversely extending perforation lines (column 2, lines 50-52).

Regarding claim 14: Stemmler discloses that knife rolls between the dispensers and the folding rolls for clean cutting the interfolded sheets of material (Figs. 1-3; via cutting rollers 30).

Regarding claim 15: Stemmler discloses that perforating rolls perforating the interfolded sheets of material (column 12, lines 21 and 22).

Regarding claim 16: Stemmler does not disclose that the dispensers are folding boards. However, Hermach discloses a similar apparatus with having the dispensers serving as folding boards (Fig. 2; via 26A-26C and 22A-22C).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Stemmler's folding apparatus by having the dispenser being folding boards, as suggested by Hermach, in order to improve the apparatus for associating and folding the respective sections of multi sectioned, bulky newspapers (column 2, lines 1-4).

Claim 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Stemmler (U.S. Patent No. 5,088,707) in view of Hermach (U.S. Patent No. 3,942,782) as applied to claim 11 above, and further in view of DuFresne (U.S. Patent No. 4,824,426).

Stemmler in view of Hermach do not disclose the claimed double "c" shaped fold as described in page 3 lines 29-31 and page 4, lies 1 and 2 of the filed specification of the invention. However, DuFresne discloses such "c" shaped folds as seen in Fig. 3.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Stemmler in view of Hermach folding apparatus, by

folding means to fold the sheet to the double fold "c" type, as suggested by DuFresne, in order to provide a starter tab for manual grasping to remove the web segments from a container (column 1, lines 66-68).

(10) Response to Argument

A. Examiner interpretation of the independent claims:

During patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). See also MPEP 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. In re Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). See also MPEP 2111.01.

Independent claim 11 recites:

An apparatus for interfolding at least two sheets of material for forming a web of interfolded sheets of material, the apparatus comprising:

- a) at least two dispensers preforming sheets of material to provide at least one longitudinally extending fold line and at least one fold respectively; and
- b) an interfolder downstream from said dispensers and comprising a pair of folding rolls for receiving preformed sheet material from each of the dispensers and producing interfolded sheets of material.

In the independent claim there are two main structures been claimed:

First structure: dispenser of dispensing sheets of material with a longitudinally fold line.
Second structure: an interfolder with pair of folding rollers.

B. The rejection of claims 11, 15, and 16 under 35 U.S.C. 103(a) is proper and should be affirmed.

Appellant argues that it would have not been obvious to combine the teaching of Hermach with the primary reference of Stemmler since Hermach describes an apparatus for folding newspaper, that has nothing to do with interfolding webs of material.

There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 fled. Cir. 1998).

See also MPEP 2143.01.

In this instance, Stemmler discloses the invention as claimed including the use of an interfolding as clearly shown on Figs. 1-3. The teaching of Hermach was chosen to show appellant that it is obvious to provide a longitudinal fold to sheets prior of feeding them to the apparatus, in order to reduce the width of the sheets.

Additionally, appellant appears to be arguing against non-obviousness by attacking the Hermach reference alone and not the combination of references as a whole. "One cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references." *In re Keller*, 642 F.2d 413,208 USPQ 871 (CCPA 1981). See also MPEP 2145(IV).

Appellant further argues that Stemmler and Hermac's apparatus each designed and built for a different purpose and a different product, which would make it non-obvious to modify Stemmler in view of Hermach. The examiner agrees that both applied references designed to produce different products, but the examiner maintains that both applied references also related to the same folding art, which would make it obvious to combine and modify one in view of the other as mentioned above in the rejection.

Appellant argues that the applied reference of DuFresne does not disclose the claimed double "c" shape fold. The examiner maintains that broadly considering the claimed double "c" fold, would be nothing more than considering a two consecutive folds of a continues web for two different webs fed into each other. It is maintained that DuFresne's reference, Fig. 3, via folds of W1 and W2 folded and combined into each other in the shape of "c" fold, considering small portion of the folds, not as whole.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Sameh H. Tawfik/
Primary Examiner, Art Unit 3721

Conferees:

/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit 3721

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